IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2115 of 1994

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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FKUSTAKHUSAIN MUSTUFA KAZI - Petitioner(s)

Versus

DIVISIONAL CONTROLLER - Respondent(s)

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Appearance :

MR MUKESH H RATHOD for Petitioner No(s).: 1.

RULE SERVED for Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 02/08/2005

ORAL JUDGMENT

1.0 The petitioner has challenged the award dated 20.03.1993 passed by the Labour Court, Surat, in Reference LCS No.182 of 1989, whereby the petitioner was denied 50 % of the back wages.

2.0 The brief facts of the case are that the petitioner herein is working as a Conductor with the respondent respondent. On 24.11.1985 while the petitioner was on duty, the bus was checked by the Checking Squad of the respondent Corporation. Certain allegations were made against the petitioner and on that basis, he was dismissed from service on 12.08.1986.

2.1 Against the said order, the petitioner preferred a reference before the Labour Court, Surat. The Labour Court, by impugned award, directed the respondent to reinstate the petitioner with continuity of service and 50 % back wages. By way of this petition, the petitioner has challenged the impugned award denying him 50 % back wages.

3.0 I have heard learned counsel for the petitioner and perused the documents placed on record. The Labour Court has given a benefit of doubt in favour of the petitioner workman while passing the impugned award. Looking to the reasonings given by the Labour Court, I am satisfied that the Labour Court has not committed any error in passing the award in question. I am in complete agreement with the reasonings given by the Labour Court and find no

reason to interfere in this petition.

3.1 Moreover, in view of the principle laid down by the Apex Court in the case of Ram Ashrey Singh v. Ram Bux Singh reported in (2003) II L.L.J., pg.176, a workman has no automatic entitlement to back wages since it is discretionary and has to be dealt with in accordance with the facts and circumstances of each case.

3.2 In the case of General Manager, Haryana Roadways v. Rudhan Singh reported in J.T. 2005(6) S.C., pg.137, it has been held that an order for payment of back wages should not be passed in a mechanical manner, but, a host of factors are to be taken into consideration before passing any such order. Hence, I am of the opinion that the Labour Court was justified in granting only 50 % back wages to the petitioner.

4.0 In above view of the matter, the petition is dismissed. Rule is discharged with no order as to costs.

(K. S. JHAVERI, J.)

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